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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,687

06/05/2007

Elka Touitou

704709

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23460 7590 06/19/2009  
LEYDIG VOIT & MAYER, LTD  
TWO PRUDENTIAL PLAZA, SUITE 4900  
180 NORTH STETSON AVENUE  
CHICAGO, IL 60601-6731

EXAMINER

YU, HONG

ART UNIT

PAPER NUMBER

4131

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,687	<b>Applicant(s)</b> TOUITOU, ELKA	
	<b>Examiner</b> HONG YU	<b>Art Unit</b> 4131	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/05/2006, 08/10/2007</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 19-36 are pending, claims 1-18 are canceled in this application. This application is a national stage entry of PCT/IL05/00249, filed on 03/03/2005. This application is a continuation-in-part of US 10/791,782, filed on 03/04/2004, now abandoned.

Claim 21 is new compared to the claims in the 10/791,782 application. Claims 19-20, and 22-36 have support in the 10/791,782 application. Thus, the effective filing date for claims 19-20 and 22-36 is 03/04/2004; the effective filing date for claim 21 is 03/03/2005.

### ***Specification***

1. The use of the trademarks "carbopol" has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.
2. Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**5. Claims 19-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blackman et al. (US 5,013,545 in view of McCadden (US 6,656,928 B1).**

***Applicant's claims***

6. The instant claims 19-36 recite a method for treating and/or impeding progression of burns comprising applying to the burned area a composition in form of gel comprising 15-50% and 20-50% of ethanol, 0.05-5% carbopol which is neutralized with 0.1-10% ammonium hydroxide and 0.1-6% triethanolamine as neutralizer, urea, aloe vera as plant extract, antifungal agent as additional agent, and hydroxyethyl cellulose as extra polymer. The said carbopol forms gel-like matrix with ethanol.

***Determination of the Scope and Content of the Prior Art***

***(MPEP 2141.01)***

7. Blackman et al. disclose an aqueous gel can be used to treat burns (column 5, line 64) comprising about 60-90% of ethanol (column 2, line 66 and 67), about 0.5-5% carbopol (column3, line 1 and 17-24) as gelling agent which is neutralized by about 0.2-5% triethanolamine (column 3, line 26-33), antifungal agents (column2, line 46), and hydroxyethyl cellulose (column3, line 39 and 40).

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8. Blackman et al. further disclose that the gelling agent is capable of gelling with the alcohol-water system (column 2, line 41 and 42) to form gel like matrix (column 2, line 23 and 24).

***Ascertainment of the Difference between Scope of the Prior Art and the Claims***

***MPEP 2141.02)***

9. Blackman et al. do not specify incorporation of ammonium hydroxide, urea and aloe vera.

10. This deficiency is cured by McCadden who teach the incorporation of ammonium hydroxide (column 10, line 9), urea (column 10, line 24) and aloe vera (column 5, line 3 and 4) in a gel composition comprising up to 50% ethanol (column 5, line 48 and column 11, line 4-6), carbopol (column 10, line 24-27) which is neutralized with ammonium hydroxide or triethanolamine (column 10, line 9 and 12).

***Finding of Prima Facie Obviousness Rational and Motivation***

***(MPEP 2142-2143)***

13. Although the range of ethanol in the composition disclosed by Blackman et al. is different from that of the composition in the instant claims, the range of ethanol in the composition disclosed by McCadden include that of the composition in the instant claims. It is the normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980) (“[D]iscovery of an optimum value of the result effective variable in a known process is ordinarily within the skill of the art.”

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See, e.g., In re Baird, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *In re Paterson* Appeal No. 02-1189 (Fed. Cir. January 8, 2003).

14. It would have been prime facie obvious at the time of the invention to a person of ordinary skill in the art to combine the teachings in Blackman et al. and McCadden to come up with the range of ethanol in the instant claims. It is generally considered to be prime facie obvious to determine a workable range of a component which is taught by the prior art to be well known and useful for the same purpose in order to form a composition that is to be used for an identical purpose. The motivation for determining it flows from its having been used in the prior art, and from its being recognized in the prior art as useful for the same purpose. As shown by the recited teachings, instant claims are no more than determining a workable range of a component. It therefore follows that the instant claims define prime facie obvious subject matter. Cf. In re Ruff, 256 F.2d 590, 118 USPQ 340 (CCPA 1958).

11. Although Blackman et al. do not specify incorporation of ammonium hydroxide, urea and aloe vera in the composition; McCadden specify incorporation of ammonium hydroxide, urea and aloe vera in the composition. It would have been prime facie obvious at the time of the invention to a person of ordinary skill in the art to combine the teachings in Blackman et al. and McCadden to specify incorporation of ammonium hydroxide, urea and aloe vera in the composition. Ammonium hydroxide is a well known nitrogen-containing basic neutralizer, urea is a well known emollient, and aloe vera is a well known plant extract to a person of ordinary skill in the art at the time of the

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invention. It is generally considered to be prime facie obvious to specify components which are taught by the prior art to be well known and useful for the same purposes in order to form a composition that is to be used for an identical purpose. The motivation for specifying them flows from their having been used in the prior art, and from their being recognized in the prior art as useful for the same purposes. As shown by the recited teachings, instant claims are no more than the specifying incorporation of ammonium hydroxide, urea and aloe vera in the composition. It therefore follows that the instant claims define prime facie obvious subject matter. Cf. In re Ruff, 256 F.2d 590, 118 USPQ 340 (CCPA 1958).

### ***Correspondence***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG YU whose telephone number is (571)270-1328. The examiner can normally be reached on M-Th 8:20 am-6:50 pm.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Patrick J. Nolan/

Supervisory Patent Examiner, Art Unit 4131